Sykt Pemandangan Sinar Sdn Bhd & Anor v Kesatuan Kebangsaan Wartawan Malaysia & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-300 OF 1995
NH CHAN, ABDUL MALEK AHMAD AND AHMAD FAIRUZ JJCA
4 SEPTEMBER 1997

Labour Law *— Trade union — Collective agreement — Collective agreement between trade union and newspaper publisher — Publishing permit taken over by third party — Whether third party bound by collective agreement to which they were not a party — Whether third party were successors, assignees or transferees of newspaper publisher — Industrial Relations Act 1967 s 17(1)*

The first respondent had entered into a collective agreement with Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh Malaysia) ('Sin Poh') which had been taken cognizance of by the Industrial Court ('the collective agreement'). Subsequently, Sin Poh was placed under receivers and managers. Sin Poh's employees were then employed by the first appellant. A sale and purchase agreement was then signed between the receivers and managers on behalf of Sin Poh and the second appellant. On 10 May 1988, the first respondent referred under s 33(1) of the Industrial Relations Act 1967 ('the Act') a case of interpretation of the collective agreement, contending that the appellants were bound by the collective agreement because of their position as successors, assignees or transferees of Sin Poh by virtue of the take over of the work office and the newspaper publishing permit and the sale purchase agreement. The Industrial Court handed down its award to the effect that the appellants were successors, assignees or transferees of Sin Poh and as such, because of their relationship which was not denied, they, by virtue of s 17(1)(a) of the Act, were jointly and severally bound by the collective agreement. The appellants' application to the High Court for an order of certiorari for the purpose of quashing the award was dismissed. The appellants appealed. This appeal essentially concerned the interpretation of s 17(1) of the Act and the question as to whether the appellants were the successors, assignees or transferees of Sin Poh as envisaged by that provision.

Held, allowing the appeal:

Section 17(1) of the Act provides that a collective agreement which has been taken cognizance of by the court shall be deemed to be an award and shall be binding on 'the parties to the agreement'. The words 'successors, assignees or transferees' therein cannot relate to the words 'the parties to the agreement' but only to 'party' and 'members' which appear after the word 'including'. Consequently, only where 'the parties to the agreement' include a party which 'is a trade union of employers' then, and only then, it will be binding on 'all members of the trade union to whom the agreement relates and

their successors, assignees or transferees', the word 'their' there referring specifically to the members of the trade union of employers which the appellants were not as they were individual employers. Further, if the literal rule is to apply, the words 'and their successors, assignees or transferees' should actually appear after the word 'agreement' in the first line and not at the end. As such, the collective agreement in this case could not apply to the appellants as it could only apply to the parties to the agreement which they were not, but where it involves a trade union of employers, and it was not disputed that the appellants and Sin Poh were not, it will also apply to its members and their successors, assignees or transferees.

Having interpreted s 17(1) of the Act in this manner, and after deliberating dutifully on the arguments and authorities, it was clear that the appellants were not the successors, assignees or transferees of Sin Poh and were not bound by the collective agreement of which Sin Poh was a party (see p 345A–F).

[Bahasa Malaysia summary

Penentang pertama telah mengikat perjanjian kolektif dengan Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh Malaysia) ('Sin Poh') yang telah diambil perhatian oleh Mahkamah Perusahaan ('perjanjian kolektif tersebut'). Berikutnya, Sin Poh diletak di bawah penerima dan pengurus. Pekerja-pekerja Sin Poh kemudiannya digaji oleh perayu pertama. Suatu perjanjian jual beli kemudiannya ditandatangani di antara penerima dan pengurus bagi pihak Sin Poh dan perayu kedua. Pada 10 Mei 1988, penentang pertama merujuk di bawah s 33(1) Akta Perhubungan Perindustrian 1967 ('Akta tersebut') suatu kes tafsiran atas perjanjian kolektif tersebut, menghujahkan bahawa perayu-perayu terikat oleh perjanjian kolektif tersebut kerana kedudukan mereka sebagai pengganti, pemegang serahhak atau penerima pindahan Sin Poh disebabkan pengambilalihan pejabat kerja dan permit penerbitan suratkhabar dan perjanjian jual beli. Mahkamah Perusahaan mengeluarkan awardnya dengan kesan bahawa perayu-perayu adalah pengganti, pemegang serahhak atau penerima pindahan Sin Poh dan dengan itu, memandangkan hubungan mereka yang tidak dinafikan, disebabkan s 17(1)(a) Akta tersebut, mereka adalah terikat secara bersesama dan berasingan oleh perjanjian kolektif tersebut. Permohonan perayu-perayu kepada Mahkamah Tinggi untuk satu perintah certiorari untuk tujuan membatalkan award itu ditolak. Perayu-perayu membuat rayuan. Rayuan ini pada dasarnya adalah mengenai tafsiran s 17(1) Akta tersebut dan persoalan tentang sama ada perayu-perayu adalah pengganti, pemegang serahhak atau penerima pindahan Sin Poh seperti yang dibayangkan oleh peruntukan itu.

Diputuskan, membenarkan rayuan:

Seksyen 17(1) Akta tersebut memperuntukkan bahawa suatu perjanjian kolektif yang telah diambil perhatian oleh mahkamah

haruslah dianggap sebagai suatu award dan harus mengikat 'pihak-pihak perjanjian'. Perkataan-perkataan 'pengganti, penerima serahhak atau penerima pindahan' dalamnya tidak boleh berhubung dengan perkataan-perkataan 'pihak-pihak perjanjian' tetapi hanya kepada 'pihak' dan 'ahli-ahli' yang muncul selepas perkataan 'termasuk'. Akibatnya, hanya di mana 'pihak-pihak perjanjian' termasuk suatu pihak yang 'merupakan kesatuan sekerja majikan', ia akan mengikat 'semua ahli kesatuan sekerja yang mana perjanjian itu berkait dan pengganti, penerima serahhak dan penerima pindahan mereka', perkataan 'mereka' di sana merujuk secara spesifik kepada ahli-ahli kesatuan sekerja majikan yang mana perayu bukan demikian, kerana mereka adalah majikan-majikan individu. Seterusnya, sekiranya rukun harfiah terpakai, perkataan-perkataan 'dan pengganti, penerima serahhak atau penerima pindahan' patut muncul selepas perkataan 'perjanjian' di baris pertama dan bukan di hujungnya. Oleh itu, perjanjian kolektif tersebut dalam kes ini tidak boleh terpakai kepada perayu-perayu kerana ia hanya boleh terpakai kepada pihak-pihak perjanjian yang mereka bukan demikian di sini, tetapi di mana ia melibatkan kesatuan sekerja majikan, dan ia tidak dipertikaikan bahawa perayu-perayu dan Sin Poh bukanlah demikian, ia juga akan terpakai kepada ahli-ahlinya dan pengganti, penerima serahhak atau penerima pindahan mereka.

Setelah mentafsirkan s 17(1) Akta tersebut dalam cara ini, dan setelah meneliti hujah dan autoriti-autoriti, adalah jelas bahawa perayu-perayu bukanlah pengganti, penerima serahhak atau penerima pindahan Sin Poh dan tidak terikat oleh perjanjian kolektif tersebut yang mana Sin Poh adalah suatu pihak (lihat ms 345A–F).]

Notes

For cases on collective agreement, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1050–1052.

Legislation referred to

Industrial Relations Act 1967 ss 2, 17(1), 33(1)

Appeal from: Originating Motion No R2–25–93 of 1993 (High Court, Kuala Lumpur)

Ambiga Sreenevasan (*K Sivakumar* with her) (*Skrine & Co*) for the appellants.

Ramdas Tikamdas (*Siva Ram & Associates*) for the first respondent.

Cur Adv Vult

Abdul Malek Ahmad JCA (delivering the judgment of the court): Award No 244 of 1988 ('the first award') between Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh Malaysia) — under Receivers and Managers ('Sin Poh') and the first respondent was handed down by the second respondent on 17 September 1988.

From the affidavits filed, the following appear to be the relevant undisputed facts:

(a) on 27 April 1987, the first respondent had entered into a collective agreement with Sin Poh which took effect on 1 January 1986;

(b) on 3 September 1987, Sin Poh was placed under Receivers and Managers — after suffering accumulated losses of RM12,257,088;

(c) on 28 October 1987, the Minister of Home Affairs cancelled Sin Poh's publishing permit;

(d) on 23 March 1988, the Minister of Home Affairs issued the publishing permit to Sin Chew Jit Poh (Malaysia) operative from 26 March 1988;

(e) for five months, therefore, there was no permit to publish;

(f) eighty five per cent of Sin Poh's employees were employed by the first appellant by fresh letters of employment dated 1 April 1988 from Sin Poh;

(g) on 5 April 1988, the first respondent referred a complaint of non-compliance of the collective agreement to the second respondent;

(h) on 6 April 1988, a sale and purchase agreement was signed between the Receivers and Managers on behalf of Sin Poh and the second appellant;

(i) on 9 April 1988, the Receivers and Managers gave notice to the first respondent that 26 of its members will no longer be required by Sin Poh;

(j) on 15 April 1988, the Receivers and Managers gave notice to the first respondent that an additional five members will no longer be required by Sin Poh;

(k) these 31 members comprise the remaining 15% of Sin Poh's employees who did not resign from Sin Poh and were not offered employment by the first appellant.

This appeal essentially concerns the interpretation of s 17(1) of the Industrial Relations Act 1967 ('the Act') and on the facts of this case, the question arises as to whether the appellants are the successors, assignees or transferees of Sin Poh as envisaged by that provision.

The first award was as a result of the first respondent referring under s 33(1) of the Act on 10 May 1988 a case of interpretation of the collective agreement taken cognizance of by the court vide Cognizance No 71/87 seeking the following:

> The union contends that Rimbunan Hijau Estate Sdn Bhd and/or its subsidiary Pemandangan Sinar Sdn Bhd are bound by the collective agreement dated 27 April 1987 (Cognizance No 71/87) because of their position as successors, assignees or transferees of Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh Malaysia) — under Receivers and Managers and therefore legally, socially and morally has to observe all the terms contained in the collective agreement.

It is relevant to reproduce extracts of the first award to get a clearer picture of the matter. At para 2, the second respondent said:

A Also, we are unable to have enough evidence on the link between Sykt Pemandangan Sinar Sdn Bhd and Sykt Rimbunan Hijau Estate Sdn Bhd; evidence will have to be taken at a subsequent date to determine the connection between these two companies, and how the sale and purchase agreement with the company affects each of them. This award will therefore be confined to the application for interpretation by NUJ.

B This finding came about because the appellants had been brought in as parties in view of two other related cases.

Paragraphs 4 and 5 of the first award read as follows:

4 Having heard exhaustive submissions from counsels, we would just C briefly mention the reasons for our interpretation. On the issue that some clause or article of an award or collective agreement has to be specifically referred to for interpretation on an application under s 33(1) of the Act, we accept the suggestion by En HK Teh, counsel for the Receivers and Managers of the company, that the interpretation sought can apply to cl 1 of the agreement. Parties will have to know who the D successors, assignees or transferees of the company is/are.

5 Puan Ambiga Sreenivasan, counsel for Sykt Pemandangan Sinar Sdn Bhd and Sykt Rimbunan Hijau Estates Sdn Bhd, cited CP Mills on *Industrial Disputes Law In Malaysia* (2nd Ed) at p 50, where the author gave his views on s 17(1)(a) of the Act, that it should, to be consistent with s 32 of the Act:

E 'mean that an agreement is to be binding on the successors, both of the parties to the agreement, and of the relevant members of the employers' trade union which is a party to the agreement.'

Puan Ambiga Sreenivasan tried to convince us that this interpretation is wrong but the more we looked at s 17(1)(a), the more we became convinced that it is a very extensive provision.

F Then, at para 8 of the first award, it is stated:

8 We follow the observations of Azmi J (as he then was) in *Re Application by Dunlop Estates Bhd* [1980] 1 MLJ 243 and Denning LJ in *Seafood Court Estates v Asher* [1949] 2 All ER 155 at p 164, cited by G En T Ramdas, counsel for NUJ, that in interpreting a statute, the intention of Parliament must not only be from the language of the statute, but also from the social conditions which gave rise to it and the mischief which it was passed to remedy.

Finally, paras 11 and 12 of the first award conclude in the following H manner:

11 In this case, the wording of cl 3 of the company's collective agreement with the union does not allow for any termination and it continues to be of effect until replaced by another collective agreement or an award of the court. Section 17(1)(a) has the effect of legislating for the agreement to be binding on the successor, assignee or transferee of the I company.

12 When making his reply to submissions by counsels for the companies involved, En T Ramdas, counsel for NUJ applied for an amendment to the interpretation sought (as in para 1 above) by deleting the words 'its subsidiary' from the wording. This was allowed. We do not know who

the real successor is between the two but it should be one or the other. Another hearing will be fixed to determine that issue, unless it can be settled by negotiation. For the moment, we are unanimously of the view, after taking into consideration the sale and purchase agreement (exh U1), that the interpretation sought, as amended, is correct.

On 18 July 1990, the High Court ordered that the first award made by the second respondent be quashed, that the second respondent do rehear and determine whether the first or the second or both appellants if at all is or are the successor, assignee or transferee of Sin Poh, that the interpretation by the second respondent of s 17(1) of the Act be applied and is hereby upheld, that there be no order as to costs and that leave to appeal on the interpretation of s 17(1) of the Act be granted.

In the grounds of judgment dated 27 February 1991, the learned trial judge had said:

> I therefore agree that the Industrial Court had made the correct interpretation of s 17(1) of the Act to mean that an agreement is to be binding on the successors, both of the parties to the agreement, and of the relevant members of the employers' trade union which is a party to the agreement.
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> Rider:
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> It may be pertinent for me to mention that I had, on the hearing of this motion on 18 July 1990, issued an order of certiorari to quash the decision of the Industrial Court in Award 244/88 which stated 'we do not know who the real successor (of Sin Poh (Star News) Amalgamated Malaysia Sdn Bhd) is between the two (the appellants) but it should be one or the other'. This is because no evidence was taken by the Industrial Court, nor submissions by the parties heard before it to determine the issue as to whether the appellants, either of them or none of them were/was a successor/ successors of Sin Poh (Star News) Amalgamated Malaysia Sdn Bhd.

On appeal by the appellants, the Supreme Court on 14 August 1991 allowed the appeal to the extent of varying the order of the High Court dated 18 July 1990 as follows:

(a) that the order as regards s 17(1) of the Act is set aside;

(b) that the second respondent is directed to rehear and determine all the issues afresh;

and that there will be no order as to costs and that the deposit of RM500 be refunded to the appellants.

The second respondent's Award No 190 of 1993 ('the second award') as between Sin Poh together with the appellants and the first respondent on 30 June 1993 was to the effect that the appellants are successors, assignees or transferees of Sin Poh and as such, because of their relationship which is not denied, they, by virtue of s 17(1)(a) of the Act, are jointly and severally bound by the collective agreement.

Paragraphs 7, 8 and 9 of the second award state:

> 7 Issues:
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> Hence, the case is back before us on the same issues and that is whether or not Sykt Rimbunan Hijau Estate Sdn Bhd and Sykt Pemandangan

A Sinar Sdn Bhd are bound by the collective agreement dated 27 April 1987 because of their position as successors, assignees or transferees of Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh Malaysia).

8 The union contended that, because of: (1) the takeover of the work office and the newspaper publishing permit by Sykt Pemandangan B Sinar Sdn Bhd; and (2) the sale and purchase agreement entered into between Receivers and Managers on behalf of the company and Sykt Rimbunan Hijau Estate Sdn Bhd, both Sykt Pemandangan Sinar Sdn Bhd and Sykt Rimbunan Hijau Estate Sdn Bhd were successors, assignees or transferees of Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh Malaysia). And as such, by virtue of s 17 of the C Industrial Relations Act 1967, they were bound by the 1986 agreement.

9 Rimbunan Hijau and Pemandangan Sinar contended otherwise. They submitted the following for our consideration: (1) This was not an interpretation exercise, as there was no clause in the 1986 agreement which made it binding as the successors, assignees or transferees. It D should come before us under s 26 of the Act; (2) Section 17(1)(a) of the Act does not apply. The words 'their successors, assignees or transferees' refer to 'all members of the trade union to whom the agreement relates' and not to the word 'parties'; and (3) In the event, s 17 of the Act applies, Pemandangan Sinar and Rimbunan Hijau are not the successors, assignees or transferees.

E The reference to the 1986 agreement is not quite correct here as although it took effect on 1 January 1986, it was only entered into on 27 April 1987.

Then at paras 11, 12 and 13 of the second award, the second respondent held:

F 11 Whether s 17(1)(a) of the Act applies

Section 17(1)(a) of the Act is plain and clear. It says that a collective agreement which has been taken cognizance of by the Industrial Court is deemed to be an award of that court and: (1) is binding on the parties to the agreement, their successors, assignees or transferees; and (2) when a party to the collective agreement is a trade union of employers, is G binding on all the employers who are members of the trade union to whom the agreement relates and the members' successors, assignees or transferees. The words 'their' in s 17(1)(a) of the Act must refer to the word 'parties' and 'members' appearing in that section. There is in fact, no ambiguity in s 17(1)(a) of the Act and the above construction is based on the literal and grammatical construction of s 17(1) which is H plain and clear. And it is consistent with ss 32 and 33 of the Act.

12 If the Legislature had wanted to exclude the successors, assignees or transferees of the parties who are not members of a trade union of employers, as suggested by Pemandangan Sinar and Rimbunan Hijau, it would have done so expressly. And if it was the intention of the I Legislature to restrict the scope of s 17(1)(a) of the Act to only the successors, assignees or transferees of the members of the trade union of employers and exclude the successors, assignees or transferees of individual employers, then it would have adopted the drafting technique and style of s 32(1)(d) of the Act.

13 In our view, s 17(1)(a) of the Act should be interpreted to mean that a collective agreement is binding on the parties to the agreement and their successors, assignees or transferees. When a party to the collective agreement is a trade union of employers, it is binding on all the employers to whom the agreement relates and its members' successors, assignees or transferees. And we so hold accordingly.

On the application of the appellants to the High Court for an order of certiorari for the purpose of quashing the second award, the High Court judge had stated:

> The background facts of the case are clearly set in the award. The issue before the Industrial Court was whether Sykt Rimbunan Hijau Estate Sdn Bhd and Sykt Pemandangan Sinar Sdn Bhd are bound by collective agreement dated 27 April 1987 because of their position as successors, assignees or transferees of Sin Poh (Star News) Amalgamated Malaysia Sdn Bhd.
>
> I find that the Industrial Court was not in error in deciding the issue under s 33(1) of the Industrial Relations Act 1967. I also find that the court was correct in its interpretation of s 17(1)(a) of the Act. The Industrial Court was also not in error in finding that the applicants, Sykt Rimbunan Hijau Estate Sdn Bhd and Sykt Pemandangan Sinar Sdn Bhd are the successors, assignees and transferees of Sin Poh (Star News) Amalgamated Malaysia Sdn Bhd.
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> I therefore dismissed the application with costs.

As for the interpretation of s 17(1) of the Act, learned counsel for the first respondent maintained that the literal rule should apply and the provision should be given its ordinary meaning.

He was of the opinion that the word 'their' before the words 'successors, assignees or transferees' in para (a) of sub-s (1) of s 17 of the Act must refer to 'parties' and 'members' appearing before it. For ease of reference, the said provision reads:

> 17 (1) A collective agreement which has been taken cognizance of by the Court shall be deemed to be an award and shall be binding on —
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> (a) the parties to the agreement including in any case where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees; and
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> (b) all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.

For this purpose, it is also relevant to look at the definitions of 'award' and 'court' in s 2 of the Act which are defined as follows:

> 'award' means an award made by the Court in respect of any trade dispute or matter referred to it or any decision or order made by it under this Act;
>
> 'Court' means the Industrial Court appointed under Part VII and includes, unless the contrary intention appears, any Court under section 22 constituted for the purpose of dealing with any trade dispute or matter referred to it, and any division thereof;

A Going back to s 17(1) of the Act, what it really says is that a collective agreement which has been taken cognizance of by the court, as in this case, shall be deemed to be an award and shall be binding on 'the parties to the agreement'. It is in para (a) specifically that the interpretation thereof appears to have raised a problem.

B In our considered view, the words 'successors, assignees or transferees' therein cannot relate to the words 'the parties to the agreement' but only to 'party' and 'members' which appear after the word 'including'. Otherwise, there ought to be commas after the word 'agreement' in the first line and 'relates' in the third line. Consequently, only where 'the parties to the agreement' include a party which 'is a trade union of employers' then, and C only then, it will be binding on 'all members of the trade union to whom the agreement relates and their successors, assignees or transferees', the word 'their' there referring specifically to the members of the trade union of employers which the appellants are not as they are individual employers. Further, if the first respondent is correct and the literal rule is to apply, the D words 'and their successors, assignees or transferees' should actually appear after the word 'agreement' in the first line and not at the end. As such, it is our finding that the collective agreement in this case cannot apply to the appellants as it can only apply to the parties to the agreement which they are not, but where it involves a trade union of employers, and it is not disputed that the appellants and Sin Poh are not, it will also apply to its E members and their successors, assignees or transferees.

Having interpreted s 17(1) of the Act in this manner, and after deliberating dutifully on the arguments and authorities, we came to the unanimous conclusion that the appellants are not the successors, assignees or transferees of Sin Poh and are not bound by the collective agreement of F which Sin Poh was a party. The appeal was, therefore, allowed with costs here and below. Accordingly, we set aside the order of the High Court and quashed the award of the second respondent. The deposit was refunded to the appellants.

G *Appeal allowed.*

Reported by Jafisah Jaafar

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